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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,247	01/14/2004	Daniel P. Homiller	9314-61	4326
54414 7590 12/23/2008 MYERS BIGEL SIBLEY & SAJOVEC, P.A. P.O. BOX 37428 RALEIGH, NC 27627				
EXAMINER				
PHILIPPE, GIMS S				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/757,247

**Applicant(s)**

HOMILLER, DANIEL P.

**Examiner**

Gims S. Philippe

**Art Unit**

2621

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-28, 30-46 and 48-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-28, 30-46 and 48-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Applicant's amendment received on September 24 2008, has been fully considered and entered, but the arguments are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 11, 19 and 31 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

Claim 1 calls for transmitting multimedia data in real time and near real time, and transmitting supplemental data. Claim 11 calls for streaming a first portion and downloading a second portions. Claim 19 calls for receiving multimedia in real time and near real time. Claim 31 calls for combining first and second portions of multimedia. Claims 1, 11, 19 and 31 are non statutory because there is no positively cited specific structure tied to the streaming, the combining, the receiving and the transmitting steps. The claim must provide a specific apparatus or device as a structure where the transmitting, the streaming, the receiving and downloading are actually taking place.

The applicant is reminded that the introduction of such structure must be supported by the Specification, and cannot be new matter. The claims as written, do not either specify the structure or tie such structure to the data being transmitted, streamed, received and downloaded.

#### **REMARKS**

4. The applicant presented several arguments to show that Chaddha does not meet the limitations of "wherein separately transmitting supplemental data is not performed in real time or near realtime". However, the applicant did not make any argument with respect to Radha (US Patent no. 6,639,943) which was introduced to show Radha providing a multimedia distribution method including the step of not performing in real-time or near real-time the separate transmission of supplemental data (See Radha col. 6, lines 63-67, col. 7, lines 1-12). The applicant spent the whole time elaborating on Chaddha while the whole purpose of introducing Radha was for the argued limitations. Further, Chaddha does propose realtime and non-real time compression of the frame to be transmitted (See Chaddha col. 12, lines 37-44).

The applicant did not argue the motivation presented by the examiner to show how obvious the limitations were in performing such a modification in Chaddha by allowing the user to select a preference for quality and/or temporal scalability as needed as taught by Radha (See col. 7, lines 18- 22).

The applicant presented several argument for claims 1 and 11. The language of these claims, however, can be interpreted as broad as possible. In fact, while the

supplemental data is separately transmitted, the claim does not indicate how such data will be transmitted. The claim leaves the examiner or the reader to guess how the supplemental data will be transmitted. The broadness of the claim does not convey the weight of the supplemental data. The examiner believes that the proposed combination of Chaddha and Radha is solid. It appears that the applicant entertains the broadness of the claim as sufficient information to overcome the proposed rejection of the last office action. The examiner respectfully disagrees. The present Office action is a non-final in light of the newly introduced non statutory rejection. It is the examiner's belief that the previous rejection under art is sufficient in light of the examiner's current remarks.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 9-28, 30-46 and 48-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaddha (US Patent no. 6266817) in view of Radha et al. (US Patent no. 6639943).

Regarding claims 1, 11, 41 and 49, Chaddha discloses a multimedia distributing method (See Abstract). The method comprising transmitting multimedia data having a first resolution (See col. 5, lines 40-41 and lines 62-63); and separately transmitting supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution (See col. 5, lines 57-59 and lines 64-67).

It is noted that while Chaddha proposes realtime and non-real time compression of the frame to be transmitted (See Chaddha col. 12, lines 37-44), it is silent about not performing in real-time or near real-time the separate transmission of supplemental data.

However, Radha provides a multimedia distribution method including the step of not performing in real-time or near real-time the separate transmission of supplemental data (See Radha col. 6, lines 63-67, col. 7, lines 1-12).

Therefore, it is considered obvious that one skilled in the art at the time of the invention would recognize the advantage of modifying Chaddha's step of performing non-real time encoding by incorporating Radha's step of not performing in real-time or near real-time the separate transmission of supplemental data. The motivation for performing such a modification in Chaddha is to allow the user to select a preference for quality and/or temporal scalability as needed as taught by Radha (See col. 7, lines 18-22).

As per claims 19, 24 and 31-34, Chaddha discloses a multimedia playing method (See Abstract). The method comprising receiving multimedia data having a first resolution(See col. 5, lines 40-41 and lines 62-63); separately receiving supplemental data, which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution; combining the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution (See col. 5, lines 57-59 and lines 64-67); and playing the multimedia content at a second resolution that is higher than the first resolution (See fig. 1, items 160 and 180 and col. 9, lines 56-61). The applicant should also note that Chaddah in disclosing a payment for service in col. 12, lines 5-20 where a global prioritization must take place, inherently provide the streaming and downloading. To the examiner, the downloading takes place as the user pay for what he/she is willing to pay.

As per claims 20-21, 53-54 and 60, Chaddha discloses a multimedia system comprising a receiver that is configured to receive multimedia data having a first resolution and to separately receive supplemental data (See col. 9, lines 62-65), which, when combined with the multimedia data having a first resolution, provides multimedia content at a second resolution that is higher than the first resolution (See col. 10, lines 1-9); a processor that is configured to combine the multimedia data having a first resolution and the supplemental data to provide the multimedia content at a second resolution that is higher than the first resolution (See step 540, items 530 and 510 of fig. 3); and a

multimedia transducer that is configured to play the multimedia content at a second resolution that is higher than the first resolution (See col. 10, lines 10-17).

As per claims 2-3, 12-13, 48, 50, 54-56, 61-63 most of the limitations of these claims have been noted in the above rejection of claims 1 and 11. In addition, Chaddha further discloses streaming the multimedia data having a first resolution, and wherein separately transmitting supplemental data comprises downloading supplemental data, which, when combined with the multimedia data having a first resolution, provides the multimedia content at a second resolution that is higher than the first resolution (See col. 3, lines 49-61).

As per claims 5, 26 and 43, Chaddha further discloses the supplemental data and multimedia content at the second resolution being a second size (See col. 3, lines 49-61 and col. 5, lines 40-44).

As per claims 6, 7, 15, 27-28, 38, 39, 45, 46, 51, 52, 58, 59, 66 and 67, most of the limitations of these claims have been noted in the above rejection of claims 1, 11, 19, 31, 41, 49, 53 and 60. In addition, Chaddha further discloses a method wherein transmitting multimedia data is subject to a first digital rights management scheme (See col. 12, lines 5-18); and wherein separately transmitting supplemental data is subject to a second digital rights management scheme that is different from the first digital rights management scheme; and wherein separately transmitting supplemental data is



preceded by receiving payment for the supplemental data that is greater than payment that is received for the multimedia data having a first resolution (See col. 12, lines 59-67 and col. 13, lines 1-4). The applicant should note that the if the user determines that he/she want supplemental data, the he/she will be paying first before receiving the requested data (See col. 12, lines 63-65). The play specific media content is part of the user willing to pay for a specific media content. In other words, while the terminology may different, the purpose is similar.

As per claims 9 and 17, most of the limitations of these claims have been noted in the above rejection of claims 1, 19, 41. In addition, Chaddha further discloses a method wherein transmitting multimedia data is performed in real or near real-time (See col. 13, lines 5-17; and wherein separately transmitting supplemental data is not performed in real or near real-time; and transmitting multimedia data is performed from a first multimedia server; and wherein separately transmitting supplemental data is performed from a second multimedia server that is different from the first multimedia server (See fig. 1, items 20, 55, 90 and 100, col. 12, lines 40-48).

As per claims 10, 18, 30, 40, Chaddha further discloses a method wherein transmitting multimedia data is performed using a wireless network; and wherein separately transmitting supplemental data is performed using a wired network (See Chaddha col. 3, lines 35-48).

As per claims 22-23, 35-36, 42, 64, the steps of receiving, separately receiving, combining and playing by a single user and the steps of receiving multimedia data and separately receiving supplemental data are at least partially separated in receiving time, originating space, receiving channel and/or medium are considered met by Chaddha since a user can determine whether or not he/she needs data (See col. 12, lines 21-23 and col. 3, lines 46-48). The applicant should note that since Chaddha includes a market-based mechanism, the steps of partially receiving data in separated time is an inherent feature.

As per claims 4, 14, 25, 37, 44, 57 and 65, since Chaddha clearly states that at the receiving end, the invention comprises decoders of varying characteristics that extract different streams at different spatial and temporal resolutions (See col. 3, lines 48-62), Chaddha enhances several perceptual distortions (Chaddha col. 4, lines 1), and decoding permits codewords to include preprocessed color conversion, dithering, edge enhancement to name a few. It is rather considered inherent that steps of providing first and second sampling frequencies, wider frequency ranges, greater frame rate are included in the method of Chaddha (See col. 10, lines 1-52).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gims S. Philippe whose telephone number is (571) 272-7336. The examiner can normally be reached on M-F (10:30-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mehrdad Dastouri can be reached on (571) 272-7418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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